

**Petrie Stores Corporation and Retail Clerks Union, Local 1049, United Food and Commercial Workers, AFL-CIO, Petitioner. Cases 22-RC-8622, 22-RC-8624, 22-RC-8631, 22-RC-8635, 22-RC-8639, 22-RC-8640, 22-RC-8645, 22-RC-8652, 22-RC-8653, and 22-RC-8654 (formerly 22-RC-14894)**

February 1, 1983

## DECISION ON REVIEW AND ORDER

BY CHAIRMAN MILLER AND MEMBERS  
ZIMMERMAN AND HUNTER

On December 31, 1981, the Regional Director for Region 22 issued his Decision and Direction of Election in the above-entitled proceeding, in which he found appropriate for collective-bargaining purposes 10 separate single retail store units including in each unit assistant managers, manager trainees, relief managers, department managers, and junior assistant managers. Thereafter, in accordance with Section 102.67 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, the Employer filed a timely request for review of the Regional Director's Decision and Direction of Election, on the grounds that the Regional Director made factual errors and departed from precedent.

On February 5, 1982, by telegraphic order, the request for review was granted on two issues: (1) whether the Regional Director erred in finding 10 single-store units appropriate, and (2) whether the Regional Director erred in finding that assistant managers, manager trainees, relief managers, department managers, and junior assistants (herein all classifications referred to *in toto* as assistant managers) are not supervisors within the meaning of Section 2(11) of the Act.

The Board has considered the entire record in this case and makes the following findings:

1. The Employer is engaged in commerce within the meaning of the Act.
2. The labor organization involved claims to represent certain employees of the Employer.
3. A question affecting commerce exists concerning the representation of employees of the Employer within the meaning of Sections 9(c)(1) and 2(6) and (7) of the Act.
4. The Employer, a New York corporation, operates a chain of retail stores selling women's clothing and accessories throughout the United States, including 34 stores in New Jersey which do business under the names of Petrie, Stuarts, G & G, Airport, and Marianne. Most stores are located within shopping malls and in some cases the Employer has several stores trading within the same shopping mall. The greatest distance between any

two New Jersey stores is approximately 125 miles. At each store, the employee complement consists of sales employees, porters, and cashiers, and varies from 1 to 14, for an approximate total of 200 such employees.

The Petitioner seeks elections in 10 separate units, one for each store located at Paramus, Wayne (two stores), Rockaway, Woodbridge (two stores), Eatontown, Toms River, and Lawrenceville (two stores), New Jersey.<sup>1</sup> Of the 10 petitions for stores, all are located in a shopping mall with at least one other Petrie store not the subject of a petition. The Employer contends that the single-store units are inappropriate. The Employer further argues that the smallest appropriate unit would be all of the Employer's stores located within the same and adjacent shopping malls which experience considerable employee interchange among them and whose employees together share a community of interest. There is no bargaining history among any of the employees in the New Jersey stores, except for the Newark store which has a collective-bargaining history dating back to 1965. The Employer and the Petitioner have been parties to successive collective-bargaining agreements covering exclusively the downtown Newark store since 1965.

The Employer's management hierarchy is located in the Employer's main office in Secaucus, New Jersey, and is dominated by founder, chairman of the board, and chief operating officer, Milton Petrie. As chief operating officer, Petrie takes personal interest and involvement in inventory control, daily salaries, staffing, and energy concerns, among other things. Reporting directly to Petrie are Hilda Kirshbaum-Gerstein, president, in charge of merchandising, and Robert Mandel, senior vice president, in charge of all areas other than merchandising. Management structure below Mandel in New Jersey consists of seven supervisors; six are responsible for a group of stores numbering 3 to 10 with at least one store in a neighboring State; the Newark store has its own supervisor. Each store manager is in daily telephone contact with his supervisor, who reports to Mandel. At least once every 2 weeks, a supervisor will personally visit each store under his or her control. When the store manager is not present in the store, an assistant

<sup>1</sup> Each unit sought is:

All sales employees, porters, cashiers, and window trimmers, including assistant managers, relief managers, manager trainees, department managers, and junior assistant managers employed by the Employer at ten individual New Jersey stores, but excluding store managers, guards and supervisors as defined in the Act.

The Petitioner, at the hearing, withdrew its alternative contention that a unit composed of 11 G & G stores would also be an appropriate unit for collective bargaining.

manager assumes control with all managerial duties and authorities.

Most administrative and personnel functions are centralized at the main office. The financial records are kept at the main office, along with employee payroll. Daily cash receipts from each store are transferred to a central account at the main office. Inventory tickets are removed from each garment at the store level and are brought to the main office for inventory control. The same forms are used throughout. All the stores look the same and the signs are similar. All stores open and close at the same time, subject only to individual shopping mall restrictions. The stores carry the same categories of merchandise and frequently call each other for items. Merchandise is transferred daily between stores and is sold for the same price throughout the New Jersey stores.

Wage rates for each job classification, graduated annual wage increases, and a 30-day raise after initial hire with the Employer are centrally determined. There is companywide seniority. All employees receive the same benefits, i.e., hospitalization, life insurance, and pension plan, except for employees working in the G & G stores.<sup>2</sup> For the most part, at all the stores, the same jobs requiring the same skills can be found. Each store has a copy of the company manual which sets forth the basic operating procedures to be followed. The manual specifies, among other things, the procedures to be followed in assisting customers, handling cash, accepting credit cards or checks, granting refunds or exchanges, employee policy as to dress code, eating, drinking, or smoking on the job, and handling inquiries. The temporary transfer of sales personnel, cashiers, and porters occurs at a rate of three to four per week, particularly between adjacent stores. Within these classifications, 10 to 15 percent of the employee complement has been transferred permanently.

Each of the six supervisors has considerable authority, both in the operation of personnel matters and the store. A supervisor is responsible for hiring and determines who will work and when. If a supervisor authorizes a manager to hire an employee, the supervisor will also interview the individual after hire. A supervisor can terminate an employee for any reason; a manager can only make a recommendation that an employee be terminated, except for instances involving theft or assault in which the manager may discipline the offending employee. A supervisor may alter or override a manager's decision or recommendation regarding reprimands and

merit salary increases. In each store, a supervisor has responsibility for displays, placement, and rearrangement of racks, and, during inventory, a supervisor must be present unless another home office representative is present.

In personnel matters, a manager's autonomy is severely circumscribed by the authority retained by the supervisor and centrally determined policies. Store managers are not even involved in scheduling of the store employees, cannot grant vacations, leaves of absences, or promotions. A manager can only hire an employee with prior authority. In addition, a manager is instructed to inform a supervisor of any employee grievance and then the supervisor usually handles the matter. A store manager has little authority to purchase merchandise, cannot open a company bank account, and cannot mark down merchandise or transfer merchandise without prior authority. From uncontradicted testimony, it is clear that a store manager's role is to insure that the procedures and policies contained in the Employer's manual are followed.

Not only does the lack of individual store manager's autonomy compel a finding that single-store units are inappropriate, so does the high degree of centralization of administration and control. There is centralized control over merchandising, purchasing, warehousing, distribution, and price tagging. All payroll functions and administration and inventory records are found at the main office. The main office establishes and the supervisors implement uniform labor relations policies. The employees have companywide seniority with identical work procedures and policies calling for identical job skills from store to store within each unit classification.

The single plant, or in the instant case retail store, is presumptively appropriate unless it is established that the single store has been effectively merged into a more comprehensive unit so as to have lost its individual identity. *Frisch's Big Boy III-Mar, Inc.*, 147 NLRB 551 (1964); *Haag Drug Company, Incorporated*, 169 NLRB 877 (1968). "The Board has never held or suggested that to rebut the presumption a party must proffer 'overwhelming evidence . . . illustrating the complete submersion of the interests of employees at the single store,' nor is it necessary to show that 'the separate interests' of the employees sought have been 'obliterated.'" *Big Y Foods, Inc.*, 238 NLRB 860, 861, fn. 4 (1978).

The Regional Director found the requested single-store units appropriate based on the degree of autonomy possessed by the store managers, the lack of compelling evidence of substantial employee interchange between the stores, the geographic

<sup>2</sup> The Employer acquired the G & G Stores subsequent to the other stores and is in the process of equalizing their benefits with the rest of the employees.

separation between many of the stores in the proposed statewide unit, the absence of any history of collective bargaining on an overall basis and the presence of a history of collective bargaining on a single-store basis, and the fact that no labor organization was seeking to represent a broader unit.

Although there has been collective bargaining in a single-store unit in New Jersey, the downtown Newark store, there is no history of collective bargaining for any of the instant stores.

Of the 10 petitions for stores, all are located in a shopping mall with at least one other Petrie store not the subject of a petition. The closeness of these stores is reflected in the substantial interchange of employees on a temporary basis, three to four employees per week, in addition to the permanent transfers consisting of 10 to 15 percent of the employee complement.

In *Kirlin's Inc. of Central Illinois*, 227 NLRB 1220 (1977), the Board, in disagreement with the Regional Director, found that the requested single-store unit was inappropriate. The Board dismissed the petition based on the evidence of centralized management of labor relations, commonality of supervision, interchange of employees, identical employee functions and terms and conditions of employment, limited personal authority of each store manager, and the proximity of the two stores within the same shopping mall. The factors found determinative in *Kirlin's* are also present in the instant case, including the proximity of stores within the same shopping mall. In *Kirlin's Inc.*, there was a single store in a shopping mall which was the subject of a petition, where another store was not. In our case, all 10 petitions for stores involve stores located in a shopping mall with at least one other Petrie store not the subject of a petition.

The Board also found inappropriate a requested single-store unit in *Super X Drugs of Illinois, Inc.*, 233 NLRB 1114 (1977). The Board denied the unit based on the lack of store manager autonomy, geographic proximity of the employer's Cook County stores, and the interchange of employees among these stores. In *Super X*, the Board found that the autonomy of the store manager with respect to personnel matters was severely circumscribed by the authority retained by the district manager. There,

as in the instant case, the *modus operandi* of store operations provides for ready telephonic communication between store managers and district manager or, in the instant case, supervisor.

In both *Super X* and this case, the store manager's limited authority is established in that the district manager or supervisor, the next level of management, has the final decisionmaking authority in hiring by the store managers and disciplinary actions, employee grievances must be discussed with their superior, and approval must be received from the district manager or supervisor to grant store employees leaves of absences, promotions, and pay raises. Also in *Super X*, the store manager participated in the scheduling of work hours for employees; whereas, in the instant case, the supervisor has sole discretion in scheduling.

In *Petrie Stores Corporation*, 212 NLRB 130 (1974), the petitioner sought to represent the employees of the employer in a unit of one store out of three stores in the Atlanta, Georgia, area. The Board found appropriate for collective bargaining a unit consisting of all three stores due to the common supervision, wage rates, benefits, and other conditions of employment, extensive employee interchange, common job skills, function, centralized administration and operation, and lack of any substantial individual store autonomy. The facts in the instant case establish that the New Jersey stores experience an equal degree of centralization and that a store manager's authority is similarly tightly circumscribed.

Upon these facts, we find, in disagreement with the Regional Director, that the requested single-store units are inappropriate. Accordingly, we find it unnecessary to pass on whether the Regional Director erred in his finding that the classifications of assistant manager, manager trainee, relief manager, department managers, and junior assistant managers are not supervisory as defined in Section 2(11) of the Act, and, as the Petitioner has made no alternative unit request, we shall dismiss the petitions.

#### ORDER

It is hereby ordered that the instant petitions be, and they hereby are, dismissed.